

## Capability Procedure (Teaching Staff)

*Last review: January 2019*

This procedure applies only to teachers or the Headteacher about whose performance there are serious concerns which the appraisal process has been unable to address.

At least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information detailing the concerns about performance and their possible consequences to enable the teacher to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the teacher of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative.

### Formal capability meeting

This meeting is intended to establish the facts. It will be conducted by the Chair of Governors (for Headteacher capability meetings) or Headteacher (for other teachers). The meeting allows the teacher, accompanied by a companion if they wish, to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

The person conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end. The person conducting the meeting may also adjourn the meeting, for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

- identify the professional shortcomings, for example which of the standards expected of teachers are not being met;
- give clear guidance on the improved standard of performance needed to ensure that the teacher can be removed from formal capability procedures (this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made);
- explain any support that will be available to help the teacher improve their performance;
- set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but in straightforward cases it would include fortnightly meetings with a member of the senior leadership team, one observation every fortnight by a member of the senior leadership team, a formal review meeting after 5 weeks and subsequently at the end of the 10 week period; and
- warn the teacher formally that failure to improve within the 10 week period could lead to dismissal. In very serious cases, this warning could be a final written warning.

Notes will be taken of formal capability meetings and a copy given to the member of staff. Where a warning is issued, the teacher will be informed in writing of the matters covered in the bullet points above and be given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.

## **Monitoring and review period following a formal capability meeting**

A 10 week performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. After this period, the teacher will be invited to a Formal Review Meeting, unless they were issued with a final written warning, in which case they will be invited to a Decision Meeting (see below).

### **Formal Review Meeting**

As with Formal Capability Meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the teacher of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

If the person conducting the meeting is satisfied that the teacher has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start. In other cases:

- If some progress has been made and there is confidence that more progress is likely, it may be appropriate to extend the monitoring and review period;
- If no, or insufficient, improvement has been made during the monitoring and review period, the teacher will receive a final written warning.

As before, notes will be taken of Formal Review Meetings and a copy given to the teacher. The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the teacher will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), will result in dismissal and given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning. The teacher will be invited to a decision meeting.

### **Decision Meeting**

As with Formal Capability Meetings and Formal Review Meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the teacher of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal process will re-start. If performance remains unsatisfactory, a decision, or recommendation to the Governing Body, will be made that the teacher should be dismissed or required to cease working at the school.

Before the decision to dismiss is made, Katharine Lady Berkeley's School will seek HR and legal advice. The teacher will be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

### **Decision to dismiss**

The power to decide that members of staff should no longer work at Katharine Lady Berkeley's School rests with the Headteacher.

## **Dismissal**

Once the decision to dismiss has been taken, the Headteacher will dismiss the teacher with notice.

## **Appeal**

If a teacher feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within five days of the decision, setting out at the same time the grounds for appeal. Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion will apply as with Formal Capability, Review and Decision Meetings and, as with other formal meetings, notes will be taken and a copy sent to the teacher.

The appeal will be dealt with impartially and, wherever possible, by governors who have not previously been involved in the case.

The teacher will be informed in writing of the results of the appeal hearing as soon as possible.

## **Confidentiality**

The capability process will be treated with confidentiality.

## **Consistency of Treatment and Fairness**

The governing body is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation and the school's Single Equality Scheme.

## **Delegation**

Normal rules apply in respect of the delegation of functions by the governing body, and the Headteacher.

## **Grievances**

Where a teacher raises a grievance during the capability procedure the capability procedure may temporarily be suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

## **Sickness**

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be referred immediately to the school's contracted occupational health service (currently Gloucestershire County Council) to assess the teacher's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures.

Discussed by Governors' Finance and Staffing committee: 12 June 2019

Agreed by Full Governors: 10 July 2019